

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

LOWELL QUINCY GREEN, #518622

§

VS.

§

CIVIL ACTION NO. 6:18cv472

JOHN D. LOVE, ET AL.

§

ORDER OF DISMISSAL

Plaintiff Lowell Quincy Green, an inmate confined in the Texas prison system, proceeding *pro se* and seeking to proceed *in forma pauperis*, brings this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge K. Nicole Mitchell who issued a Report and Recommendation (Dkt. #11) concluding that the lawsuit should be dismissed with prejudice for purposes of *in forma pauperis* proceedings pursuant to the “three strikes” provisions of 28 U.S.C. § 1915(g). The Report also recommended that Mr. Green’s complaint against Judges Schell and Love should be dismissed with prejudice as legally frivolous pursuant to 28 U.S.C. § 1915A. Judges Schell and Love are entitled to absolute immunity from claims arising out of acts performed in the exercise of their judicial functions. Mr. Green has filed objections (Dkt. #13).

Mr. Green alleges in his objections that Magistrate Judge Mitchell is biased against him and that he does not have “three strikes.” Nonetheless, all of the cases and appeals that were dismissed as frivolous and/or for failure to state a claim were listed in the Report and

Recommendation. The court has conducted a *de novo* review of the cases and appeals and has determined that Mr. Green has accumulated at least “three strikes.” Furthermore, Mr. Green has failed to allege any facts establishing that he was under imminent danger of serious physical injury at the time he filed the lawsuit in order to trigger the exception provided by § 1915(g).

Mr. Green also alleges that Judge Mitchell should have recused herself because he recently named her as a defendant in an amended complaint in *Green v. Lorie Davis, et al.*, Cause No. 6:16-cv-1261. His objections raise a new claim that was not in his complaint. Issues raised for the first time in objections are not properly before the Court. *Cupit v. Whitley*, 28 F.3d 532, 535 n.5 (5th Cir. 1994); *Harrison v. Smith*, 83 F. App’x 630, 631 (5th Cir. 2003).

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Mr. Green to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Mr. Green’s objections are without merit. It is therefore

ORDERED that the Report and Recommendation (Dkt. #11) is **ADOPTED**. It is further


ORDERED that the complaint is **DISMISSED** with prejudice for purposes of *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(g). It is further

ORDERED that Mr. Green’s motion to proceed *in forma pauperis* (Dkt. #10) is **DENIED**. Mr. Green may resume the lawsuit if he pays the entire filing fee of \$400 within

thirty days from the entry of the Final Judgment. Mr. Green is warned, however, that the lawsuit may be dismissed as frivolous if he timely files the entire filing fee of \$400. It is finally

ORDERED that all motions not previously ruled on are **DENIED**.

SIGNED this the 7 day of **January, 2019**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge